

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Michael Andre Lunsford,	)	C/A: 9:13-3547-DCN-BM
	)	
Plaintiff,	)	
	)	
vs.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Sheriff Al Cannon Det Center,	)	
	)	
Defendant.	)	
_____	)	

The plaintiff, Michael Andre Lunsford, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983. Plaintiff is detained at the Sheriff Al Cannon Detention Center (the “Detention Center”), and files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint names as defendant only the Detention Center.

Under established local procedure in this judicial district, a careful review<sup>1</sup> has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915 and § 1915A, the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and in light of the following precedents: *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *Denton v. Hernandez*, 504 U.S. 25 (1992), *Neitzke v. Williams*, 490 U.S. 319 (1989), *Haines v. Kerner*, 404 U.S. 519 (1972), *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951 (4th Cir. 1995) (*en banc*), and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983). *Pro se* complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a *pro se* complaint to allow the development of a

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<sup>1</sup> 28 U.S.C. § 1915A(a) requires review of a “complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.”

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potentially meritorious case. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Cruz v. Beto*, 405 U.S. 319 (1972); *Erickson*, 551 U.S. at 93 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)).

However, even when considered under this liberal standard, the Complaint filed in this action is subject to dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990); *see also Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (outlining pleading requirements under the Federal Rules of Civil Procedure).

#### Background

According to the Complaint (*see generally* ECF No. 1), the showers of the Detention Center leak and create hazardous conditions. Plaintiff alleges that, as a result, he has incurred physical and mental injuries, some of which are ongoing. Plaintiff adds that he has filed numerous grievances, but the hazardous conditions persist. He claims that he lives in a state of fear. Plaintiff seeks to recover monetary damages for his physical injuries, “mental/physical anguish,” neglect, maintaining unsafe conditions, and “violations of facility regulations, policies and procedures.” (*Id.* at 4.)

#### Discussion

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate

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violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, \_\_\_ U.S. \_\_\_, \_\_\_, 132 S. Ct. 1497, 1501 (2012).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). The Detention Center is the only named defendant in this case, and inanimate objects such as buildings, facilities and grounds are not “persons” and do not act under color of state law. *See Allison v. Cal. Adult Auth.*, 419 F.2d 822, 823 (9th Cir. 1969) (California Adult Authority and San Quentin Prison not “person[s]” subject to suit under § 1983); *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Therefore, the Detention Center is not a proper defendant upon whom the United States Marshals Service could effect service of process, and against which relief could be granted by this Court. Moreover, to the extent the Complaint sounds in negligence, such claims are not actionable under 42 U.S.C. § 1983. *See Daniels v. Williams*, 474 U.S. 327, 328–36 & n.3 (1986); *Davidson v. Cannon*, 474 U.S. 344, 345–48 (1986); *Pink v. Lester*, 52 F.3d 73 (4th Cir. 1995) (*Daniels* bars an action under § 1983 for negligent conduct); *Ruefly v. Landon*, 825 F.2d 792, 793–94 (4th Cir. 1987).

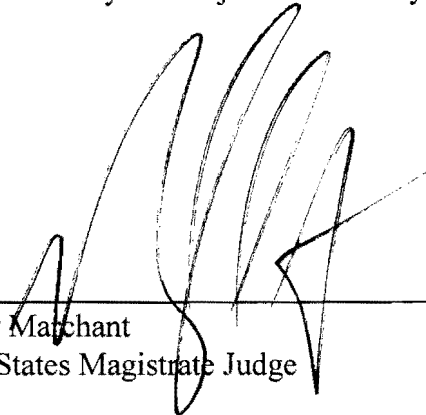
### Recommendation

Based on the foregoing, the undersigned finds that Plaintiff has failed to set forth a plausible claim, as he has failed to name a party Defendant subject to suit for his claims.<sup>2</sup> *Cf. Iqbal*,

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<sup>2</sup>Plaintiff may pursue this matter in state court through the filing of a case under the South Carolina Tort Claims Act, if he has otherwise met the requirements of that Act. If Plaintiff wishes to proceed in Federal Court, he must file a Complaint naming a proper party Defendant and have

556 U.S. at 682. Accordingly, it is recommended that the Court dismiss the above-captioned case without prejudice and without service of process. *See Denton v. Hernandez; Neitzke v. Williams; Brown v. Briscoe*, 998 F.2d 201, 202–04 (4th Cir. 1993); 28 U.S.C. § 1915(e)(2)(B) (essentially a redesignation of “old” § 1915(d)); 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).



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Bristow Marchant  
United States Magistrate Judge

January 17, 2014  
Charleston, South Carolina

***Plaintiff's attention is directed to the important notice on the next page.***

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exhausted all of his administrative remedies.

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### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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